

McArthur



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Vickers Incorporated

File: B-230955

Date: May 31, 1988

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### DIGEST

Protest against a solicitation specification filed with the contracting officer prior to the closing date for the receipt of initial proposals was untimely where the agency received proposals on the scheduled closing date without taking corrective action and the subsequent protest to the General Accounting Office was filed more than 10 working days later.

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### DECISION

Vickers Incorporated protests the award of a contract under request for proposals (RFP) No. F41608-88-R-0924 issued by the Department of the Air Force, San Antonio Air Logistics Center, Kelly Air Force Base, Texas, for hydraulic pumps for use in the C-5A/B aircraft. Vickers contends that the RFP specifications were unduly restrictive of competition and that this restriction on competition cannot be justified.

We dismiss the protest.

On November 17, 1987, the agency provided the protester and the Abex Corporation, the only known potential sources of hydraulic pumps for the C-5A/B, with a copy of revised pump specifications planned for incorporation into a forthcoming solicitation. Paragraph 3.3.1.2 of the revised specifications contained a maximum dry weight limitation of 27 pounds. By a letter of November 24, the protester requested a permanent waiver of this weight limit to allow it to offer its PV3-300-10A pump, previously used on the C-5A/B. This pump has a maximum dry weight of 34.9 pounds.

On December 3, the agency issued the protested RFP with the revised specifications and a date for receipt of initial proposals of January 6, 1988. On December 8, the agency

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responded to the protester with a letter denying its request for a waiver of the weight limit and explaining the rationale for the weight restriction. Vickers sent a written protest to the contracting officer on December 21 and submitted a timely proposal maintaining its objection to the 27-pound weight limit and offering to provide its PV3-300-10A, which according to the protester met all other RFP specifications.

On March 18, 1988, the agency awarded a contract to Abex Corporation and responded formally to Vicker's protest with a letter denying the protest against the RFP's weight limitations. Vickers filed a protest with our Office on April 6, 1988, claiming that the RFP was unduly restrictive and that the hydraulic pump specification exceeded the agency's minimum needs. The protester further alleged that the agency was conducting a de facto sole-source procurement with Abex, the only contractor able to deliver a 27-pound pump in a timely manner. The protest also challenged the agency's claims of urgency. Vickers raised essentially these same concerns in its agency-level protest.

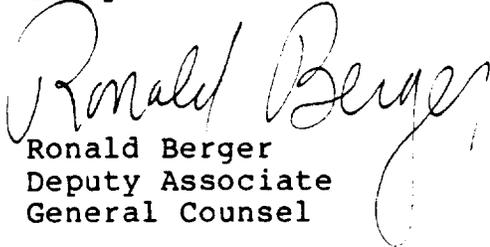
This protest to our Office is clearly untimely. Under our Bid Protest Regulations, protests initially filed with the contracting agency must be filed at the General Accounting Office within 10 working days of the protester's receipt of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1988). The agency's receipt of proposals on the scheduled closing date without taking any corrective action in response to a protest constitutes such initial adverse agency action. 4 C.F.R. § 21.0(f); Dock Express Contractors, Inc.--Request for Reconsideration, B-223966.2, Mar. 4, 1987, 87-1 CPD ¶ 243. Here, Vickers protest is untimely because it did not file its protest with our Office until April 6, 1988, nearly 3 months after the closing date, when the initial adverse action on its agency-level protest occurred.

The protester argues that under our holding in Interface Flooring Systems, Inc., B-225439, Mar. 4, 1987, 87-1 CPD ¶ 247, its protest is timely. In that case, however, the agency specifically advised the protester that it would issue no decision on the protest until after submission of best and final offers; in general, where the contracting officer has specifically advised the protester that receipt of initial proposals does not constitute initial adverse action, that is, denial of its protest, we have accepted

protests filed within 10 working days of the agency's formal denial of a protest. See Centurial Products, 64 Comp. Gen. 858 (1985), 85-2 CPD ¶ 305. There is no evidence that the contracting officer made such a concession in the instant case.

The protester also argues that we should consider its protest under section 21.2(b) of our Bid Protest Regulations, which sets out an exception to our timeliness rules for issues that are significant to the procurement system. In order to prevent the timeliness requirements from becoming meaningless, we strictly construe and seldom use the significant issue exception, limiting it to protests that raise issues of widespread interest in the procurement community or which have not been considered on the merits in a previous decision. Astronautics Corp. of America-- Request for Reconsideration, B-229854.2 et al., Apr. 20, 1988, 88-1 CPD ¶ 390. The protest before us does not appear to present an issue whose resolution would benefit parties other than Vickers.

The protest is dismissed.

  
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General Counsel